Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1953

No. ....., Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,

Complainant,

vs.

STATE OF LOUISIANA, STATE OF FLORIDA, STATE OF TEXAS, STATE OF CALIFORNIA, GEORGE M. HUMPHREY, DOUGLAS McKAY, ROBERT B. ANDERSON, IVY BAKER PRIEST,

Defendants.

Response of the States of California and Florida to the Petition for Rehearing of the State of Rhode Island and Providence Plantations.

EDMUND G. BROWN,
Attorney General of California;
WILLIAM V. O'CONNOR,
Chief Deputy Attorney General;
EVERETT W. MATTOON,
Assistant Attorney General;
GEORGE G. GROVER,
Deputy Attorney General,
600 State Building,
Los Angeles 12, California.

Attorneys for the State of California.

RICHARD W. ERVIN,
Attorney General of Florida;
HOWARD S. BAILEY,
Assistant Attorney General;
FRED M. BURNS,
Assistant Attorney General;
JOHN D. MORIARTY,
Special Assistant Attorney General,
State Capitol,
Tallahassee, Florida,

Attorneys for the State of Florida.

April 6, 1954.

TABLE OF AUTHORITIES CITED

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Defendants.

Response of the States of California and Florida to the Petition for Rehearing of the State of Rhode Island and Providence Plantations.

On March 15, 1954, this Court denied the motions of Rhode Island and Alabama for leave to file complaints attacking the constitutionality of the Submerged Lands Act, 67 Stat. 29 (1953).[1] 22 Law Week 4171. Rhode

[1]Rhode Island's implication that she was taken by surprise by the ground of the Court's decision—Art. 4, Sec. 3, Cl. 2 of the Constitution—does not withstand examination. That ground was urged as decisive of the cases in three different briefs filed for the defendants. (Brief for individual defendants, p. 22; Brief for California and Florida, p. 19; Brief for Louisiana, p. 7.) It should be noted in passing that the Court's opinion did not recognize, as Rhode Island asserts (p. 17), "the right and standing of the complainants to sue."

Island has filed a petition for rehearing which has been adopted by Alabama in the companion case, *Alabama v. Texas et al.*, No. ....., Original. The sum of Rhode Island's petition is that all offshore lands are excluded from Public Law 31 by Section 5, which excepts from the operation of Section 3 "all lands acquired by the United States . . . in a proprietary capacity."[2] California and Florida believe that this argument requires only a brief answer.

1. Rhode Island's argument based on Section 5 was fully presented to the Court by prior briefs and argument. The Reply Brief for Rhode Island pointed out the exception in Section 5 of "all lands acquired by the United States . . . in a proprietary capacity" and urged that, "since the United States has proprietary as well as sovereign rights in the off-shore lands, Public Law 31 is ineffective by its own terms to transfer the rights and interests of the United States therein." (Pp. 7-8, n. 4.) Moreover, at the oral argument before the Court, counsel for Alabama pressed this argument at some length. [Tr. pp. 41-43.]

It is also clear that the Court itself was cognizant of the argument based on Section 5, which is the subject of the petition for rehearing. In response to the contention of counsel for Alabama that the offshore lands were specifically excepted from the operation of the Act by

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[2]Division I of Rhode Island's petition (pp. 2-5) asserts that the Court's opinion upholding Congress' power to grant the submerged offshore lands is "advisory" in character because Section 5 indicates that Public Law 31 does not grant such lands. Division II of Rhode Island's petition (pp. 6-16) contends that, in view of the exception in Section 5, the defendant States are not authorized to exercise control over the marginal sea lands.

Section 5 thereof," Mr. Justice Burton asked: "Do you think that makes sense?" [Tr. p. 42.] When counsel for Alabama renewed the argument somewhat later, Mr. Justice Reed remarked: "Well, I understand that argument." [Tr. p. 44.] Rehearing is plainly not warranted to consider the repetition of an argument which was adequately presented to the Court on the prior hearing.

2. Despite its full presentation, this argument based on Section 5 was not referred to in any of the four opinions in this case. This suggests that, not only did the argument fail to persuade the majority, but it was also not convincing to the two dissenting Justices. The reason lies in the fact that the argument, to borrow Mr. Justice Burton's phrase, just does not make sense.

Congress considered legislation relating to the submerged lands of the marginal sea almost continuously for nine years. The lengthy debates in both Houses of Congress which culminated in the passage of the Submerged Lands Act centered around the disposition of those lands to the coastal States. Yet, against this background, Rhode Island claims that the exception in Section 5 of "all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift or otherwise in a proprietary capacity" must be read to mean that the Act has nothing to do with the offshore lands. "Such abstract reasoning," as the Court said recently in analogous circumstances, "is mechanical jurisprudence in its most glittering form." (*Bindczyck v. Finucane*, 342 U. S. 76, 85 (1951).)

There is clear and unequivocal evidence that Congress did not intend that Section 5(a) should be interpreted as contradicting the express provisions of Section 3, as

Rhode Island now suggests. In the Executive Hearings of the Senate Interior Committee, which was responsible for revising Section 5, Senator Long suggested that an argument could be made that another exception in Section 5(a) excluded the entire marginal belt from the Act. Senator Cordon, acting Chairman of the Committee, replied as follows:

> "*Senator Cordon.* I can see the logic of that argument, and that is that it could be claimed. Of course, it would do violence to the whole bill, and the rules of statutory construction would necessarily have to operate, and it would not be the position taken. But I am perfectly willing here to suggest that the claim of right [under the exception clause] be other than a claim that rests in either of the three decisions, and spell them out. That would eliminate any claim under the court decision." (Executive Hearings before Senate Interior and Insular Affairs Committee on Sen. J. Res. 13 and other Bills, 83rd Cong., 1st Sess., 1347-48 (1953).)

This colloquy is reflected in the Report of the Senate Interior Committee on Sen. J. Res. 13, which states:

> "However, the committee wishes to emphasize that the exceptions spelled out in this amendment do not in anywise include any claim resting solely upon the doctrine of 'paramount rights' enunciated by the Supreme Court with respect to the Federal Government's status in the areas beyond inland waters and mean low tide." (Sen. Rep. No. 133, 83rd Cong., 1st Sess., 20 (1953).)

Rhode Island attempts (p. 11) to discount this statement by saying that the claim of the Federal Government did not rest "'solely' on paramount rights." However, a fair reading of the Committee's statement indicates that

it was answering in advance the very argument Rhode Island is now making. Congressional bodies seldom speak as clearly as this Committee did in indicating that offshore lands are not excluded from the Act by reason of the fact that they were previously held, in the *California*, *Texas*, and *Louisiana* opinions, to be subject to the paramount power of the United States.

There is no need to labor here the point that Congress, in passing the Submerged Lands Act, intended to grant the submerged lands within historic boundaries to the coastal States. A reading of the reports and debates clearly establishes that neither proponents nor opponents of the legislation understood that the grant of offshore lands in Section 3 would be nullified by an exception in Section 5(a). Moreover, the Outer Continental Shelf Lands Act, 67 Stat. 462 (1953), was squarely based on the premise of State ownership and management of the submerged lands within historic State boundaries. Sections 2(a), 3(a), 8(a).

Rhode Island's flat assertion (pp. 12-13) that Attorney General Brownell "no doubt" drafted Section 5 to exclude all offshore lands from the operation of the Act is wishful thinking. Although the Department of Justice at first tentatively suggested that the grant to the States be limited to management powers, after Congress had drafted the present Act all departments of the Administration fully supported the principle of State ownership and approved the language and intent of Section 3. President Eisenhower spoke for the Administration as a whole when in signing the Act he referred to it as recognizing the States' claim to "the submerged lands within their historic boundaries." (Sen. Rep. No. 411, 83rd Cong., 1st Sess., 52.)

Conclusion.

The argument advanced by Rhode Island as the ground for rehearing was fully presented to the Court at the original hearing. This argument, which would construe an exception clause so as virtually to nullify the Act, is plainly without merit. The States of California and Florida therefore respectfully urge that the petition for rehearing be denied.

Respectfully submitted,

EDMUND G. BROWN,
Attorney General of California;
WILLIAM V. O'CONNOR,
Chief Deputy Attorney General;
EVERETT W. MATTOON,
Assistant Attorney General;
GEORGE G. GROVER,
Deputy Attorney General,
600 State Building,
Los Angeles 12, California,
Attorneys for the State of California.

RICHARD W. ERVIN,
Attorney General of Florida;
HOWARD S. BAILEY,
Assistant Attorney General;
FRED M. BURNS,
Assistant Attorney General;
JOHN D. MORIARTY,
Special Assistant Attorney General,
State Capitol,
Tallahassee, Florida,
Attorneys for the State of Florida.

April 6, 1954.

Certificate of Service.

I, William V. O'Connor, certify that I have served a copy of the foregoing Response upon each of the following named individuals by mailing a copy of said Response to them postage prepaid, at the following addresses:

Hon. William E. Powers
Attorney General of Rhode Island
Providence County Court House
Providence, Rhode Island

Hon. Fred S. LeBlanc
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. George M. Humphrey
Secretary of the Treasury
Department of the Treasury
Washington, D. C.

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Ivy Baker Priest
Treasurer of the United States
Department of the Treasury
Washington, D. C.

Hon. Herbert Brownell, Jr.
Attorney General of the United States
Department of Justice
Washington, D. C.

Hon. Si Garrett
Attorney General of Alabama
State Capitol
Montgomery, Alabama

Done at Los Angeles, California, this 6th day of April, 1954.

WILLIAM V. O'CONNOR,
Chief Deputy Attorney General of California